

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

MICHAEL AMOS, *ET AL.*

PLAINTIFFS

V.

CASE NO. 4:20-CV-007-DMB-JMV

TOMMY TAYLOR, *ET AL.*

DEFENDANTS

**MEMORANDUM BRIEF IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION
FOR TEMPORARY RESTRAINING ORDER AND MANDATORY PRELIMINARY
INJUNCTION AS TO COVID-19**

INTRODUCTION/FACTS

The World Health Organization (“WHO”) has declared the coronavirus disease of 2019, also known as COVID-19, a global pandemic.¹ As of March 16, 2020, there were 168,019 confirmed coronavirus cases worldwide, which have resulted in 6,610 deaths.² On March 13, 2020, President Trump declared a national state of emergency³, and, the following day, Governor Tate Reeves followed suit in Mississippi⁴. Indeed, this Court has taken judicial notice of the pandemic and has taken action to protect the Court, its staff, jurors and the public.⁵

As the number of cases in Mississippi grows, Governor Reeves has urged government officials to take “proactive measures to limit community spread.”⁶ The Governor’s promise is that “we [in Mississippi] are not taking any chances.”⁷ The Governor’s advice: “I urge all

¹ See World Health Organization Director-General’s Brief on COVID-19 (3/11/2020) (Ex. A).

² See WHO website on COVID-19 cases worldwide

<https://who.maps.arcgis.com/apps/opsdashboard/index.html#/c88e37cfc43b4ed3baf977d77e4a0667>

³ See Presidential Proclamation Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) dated 3/13/2020 (Ex. B).

⁴ See State of Mississippi, Office of Governor, Proclamation dated 03/14/2020 (Ex. C).

⁵ See Standing Order In Re: The Novel Coronavirus (COVID-19), 3:20-mc-9, U.S. District Court for the N.D. Miss. dated 3/16/2020 (Ex. D).

⁶ See Governor’s video press release re: COVID-19 (3/14/ 2020).

⁷ *Id.*

Mississippians to use caution.”⁸ Similarly, the WHO is encouraging citizens to take responsibility for their own safety. The WHO states that “[e]very person has the capacity to contribute, to protect themselves, to protect others, whether in the home, the community, the healthcare system, the workplace or the transport system.”⁹ Unfortunately, neither the Governor’s advice, nor the WHO’s supposition, is entirely true.

The inmates at the Mississippi State Penitentiary at Parchman (“Parchman”) cannot “use caution” to avoid COVID-19, as suggested by the Governor. Neither do inmates have the capacity to “protect themselves,” as assumed by the WHO. Inmates at Parchman are wholly dependent on the Mississippi Department of Corrections (“MDOC”) for their health and safety, including their protection from COVID-19. In the face of the coronavirus pandemic, Parchman inmates are helpless in the most literal sense of the word, and without Court intervention, the MDOC will default to the same feckless approach to crises that has become the norm at Parchman.

Thus far in 2020, twenty-seven (27) inmates have died in MDOC custody.¹⁰ Some of these deaths were caused, in one way or another, by abhorrent living and medical conditions inside Parchman, which have been described by some experts as the worst by far in the United States.¹¹ Among the litany of woefully deficient conditions inside Parchman, perhaps the chief complaint is the lack of adequate medical care.¹² In Parchman, treatment for minor ailments is hard to come by, let alone serious diseases that require monitoring and medication. An outbreak of coronavirus inside Parchman, where many inmates suffer from respiratory diseases that place them at increased

⁸ *Id.*

⁹ See WHO Statement, COVID-19 cases surpassing 100,000 (3/7/2020) (Ex. E).

¹⁰ See Doc. # 56 (Plaintiffs’ Opposed Motion for Judicial Notice of 2020 deaths of inmates in the custody of the Mississippi Department of Corrections).

¹¹ See Affidavit of Marc Stern, MD MPH (Ex. F).

¹² See Examples of Insufficient Medical Care (Doc. # 14 (Plaintiff’s Motion for TRO and Injunctive Relief); Doc # 19 (Plaintiffs’ Amended Complaint); Doc # 33-34, (Plaintiffs’ Motion to Compel Expedited Discovery); and Doc # 39 (Plaintiffs’ Reply Memorandum in Support of their Motion to Compel)).

risk, will immediately overwhelm Parchman's broken medical apparatus and wreak havoc on the health and safety of the inmate population.

Without immediate Court intervention, Plaintiffs and the other inmates at Parchman will be left helpless, subject to the whims of a virus that has proven fatal, with virtually no protection. The United States and the World are taking unprecedented protective measures to stem the spread of the coronavirus, yet MDOC's flaccid response has been merely to cancel visitation and limit transfers.¹³ Defendants are charged by law with protecting the inmates under their care and custody. They cannot be allowed to do virtually nothing in the face of the greatest public health threat to the United States citizenry in over 50 years.

SPECIFIC RELIEF SOUGHT

Plaintiffs request the following emergency relief:

a. **Immediate Testing.** Defendants must be required immediately to implement testing protocols for the identification and containment of COVID-19. These protocols must include the immediate testing of all inmates, Parchman employees, and all other individuals entering Parchman. Specifically, a random sample of inmates (subject to their consent) are to be tested to determine the likelihood that the virus is already present in the facility. If the virus is already present or becomes present, the institution is to be provided with adequate testing kits to determine the extent of the crisis. Those with symptoms, or of a vulnerable class, are to be prioritized. If said adequate testing kits are unavailable or scarce, then the most concerning symptoms—fever and cough—should be tested first. Finally, all guards and other facility employees are to be tested regularly (every two weeks) to ensure that the virus is not carried into

¹³ See MDOC Press Release "MDOC Takes Preventative Steps Against Coronavirus Exposure" dated 3/12/2020 (Ex. G).

the facility. Said guards and employees are to be supplied with masks and gloves so that the virus is not unintentionally and unknowingly spread inside the facility.

b. **Immediate Screening.** Defendants must be required to screen each employee or other person entering the facility every day to detect fever over 100 degrees, cough, shortness of breath, recent travel to a high risk country, and/or exposure to someone who is symptomatic or under surveillance for COVID-19.

c. **Current Inmate Quarantine.** Defendants must be required to establish non-punitive quarantine for all individuals who test positive for COVID-19, who were directly exposed to individuals who test positive for COVID-19, or who exhibit symptoms of the virus. High-risk incarcerated persons must be transferred to a medical facility that can accommodate them to ensure they are appropriately quarantined and treated. Any individual who must interact with those confirmed or likely inflicted with COVID-19 must utilize masks and gloves. In short, every possible effort must be made to separate infected or potentially infected individuals from the rest of the incarcerated population. Finally, it must be ensured that no individual is incarcerated past his release date, even if quarantine is warranted, so confirmed cases requiring quarantine should be transferred from Parchman to an outside hospital or to self-quarantine in such a scenario.

d. **New Inmate Quarantine.** Defendants must be required to establish a fourteen (14) day, non-punitive quarantine for all new inmates entering Parchman to ensure they are not infected before exposing them to the general population.

e. **Institutional Hygiene.** Defendants must be required to increase the sanitation and cleaning protocol and frequency for all public spaces, highly traveled areas, and cells.

f. **Personal Hygiene.** Defendants must be required to provide hand sanitizer with 60% or more alcohol, antibacterial soap, antibacterial wipes and other hygiene products to each

inmate free of charge and ensure replacement products are available as needed. Further, hand sanitizer with 60% or more alcohol must be declassified temporarily as contraband, as it is one of the only methods proven to slow and prevent the spread of coronavirus.

g. **Limit Contact Visitation.** Based on information and belief, Defendants already have limited physical contact visitation, but Defendants must be required to implement or increase non-contact visitation options such as video conferencing and/or telephone calls for all types of visits (family, nonlegal, professional visits, etcetera). Plaintiffs acknowledge that while suspension of physical visitation may be necessary to contain or slow the spread of the virus, measures such as suspension of visitation and institution-wide lockdown have significant negative effects on people under correctional control and their families. For example, psychological distress and increased incidences of violence are documented effects of such measures. Therefore, it is imperative that non-contact visitation methods be implemented and utilized liberally.

h. **Waive Copays.** Defendants, including without limitation healthcare providers working under their direction, must be required to waive copays for inmate medical evaluation and care related in any way to COVID-19 and/or its symptoms. A waiver of these types of copays is necessary to avoid disincentivizing inmates from requesting medical treatment. Further, steps must be taken to reduce wait times for medical evaluation and treatment to the fullest extent possible. Additionally, the most vulnerable individuals (anyone who is elderly and/or has a history of respiratory illness) should be prioritized and seen as quickly as possible. Further, masks and gloves are to be provided to those exhibiting symptoms (such as coughing and sneezing) while they await medical screening/care.

i. **Supply Chain.** Defendants must be required to identify the supplies and other materials upon which the institution is dependent, such as food, medical supplies, certain

medicines, cleaning products, etcetera, and prepare for shortages of these items, and delays or disruptions in the supply chain.

j. **Reporting.** Defendants must be required to report to the Court weekly to apprise the Court of the progress made in implementing the foregoing and the results of testing of employees and inmates; the numbers of COVID-19 cases at Parchman, if any; and the measures in place to separate inmates who have tested positive, or who may have been exposed, from the general population.

ARGUMENT

It is well-established that courts should grant preliminary injunctive relief where the movant can show the following:

- (1) a substantial likelihood of success on the merits; (2) a substantial threat that the movant will suffer irreparable injury if the injunction is denied; (3) that the threatened injury outweighs any damage that the injunction might cause the defendant; and (4) that the injunction will not disserve the public interest.

Jackson Women's Health Org. v. Currier, 760 F.3d 448, 452 (quoting *Hoover v. Morales*, 164 F.3d 221, 224 (5th Cir. 1998)). The same standard applies to both a temporary restraining order and a preliminary injunction. *Clark v. Pritchard*, 812 F.2d 991, 993 (5th Cir. 1987). Further, courts should compel certain actions through granting mandatory injunctive relief where the movant shows a clear entitlement to the relief under the facts and the law. *Justin Indus., Inc. v. Choctaw Secur., Ltd. P'ship*, 920 F.2d 262, 264 (5th Cir. 1990).

I. Plaintiffs are Substantially Likely to Succeed on the Merits, as Plaintiffs are Indisputably Entitled to Reasonable Protections Against COVID-19

Defendants are obligated by law to provide for the health and safety of inmates at Parchman. Prison officials at Parchman have a duty to provide adequate medical care, shelter, and to take “reasonable measures to guarantee the safety of the inmates.” *Brown v. Plata*, 563 U.S.

493, 511 (2011) (quoting *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984)). “A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society.” *Id.* Defendants are under a duty to take affirmative steps in order to safeguard prisoners by providing them safe, sufficient, and sanitary shelter along with adequate medical treatment. *See Id.*; *see also Palmer v. Johnson*, 193 F.3d 346, 352 (5th Cir. 1999) (finding that prisoners are entitled to basic hygiene); *Harper v. Showers*, 174 F.3d 716, 720 (5th Cir. 1999) (holding as non-frivolous a prisoner’s claims based on deprivation of cleanliness, sleep, and peace of mind); *Gates v. Cook*, 376 F.3d 323, 338 (5th Cir. 2004) (affirming injunction to clean cells between occupants and make cleaning supplies available weekly); *Ramos v. Lamm*, 639 F.2d 559, 568 (10th Cir. 1980) (prisoner is entitled to “shelter which does not cause his degeneration or threaten his mental and physical wellbeing.”).

Plaintiffs seek to require Defendants to honor their legal obligation and take reasonable steps immediately to protect inmates at Parchman from COVID-19. Given that the entire World is in a state of emergency, there is a substantial likelihood that Plaintiffs will succeed on the merits of their motion seeking reasonable protections for themselves and the other inmates, who are particularly at risk, but who are not allowed the means available to other citizens to protect themselves.

Unfortunately, Defendants consistently struggle to provide, if not recklessly disregard, basic medical care at Parchman. This deficiency existed long before the rapid spread of COVID-19. Scores of sworn affirmations have revealed medieval conditions at Parchman where inmates suffer in cells with no electricity, no running water, overflowing toilets, feces and urine on the floors, rats in the bunks, no heat, no air conditioning, no medical treatment, and no prescription

medication.¹⁴ So inept is the healthcare system at Parchman, many inmates often cannot even get to the institution's medical facility, much less receive effective treatment.¹⁵ It is upon this woeful healthcare record that Defendants stand to confront the COVID-19 pandemic. Without Court intervention, Plaintiffs and the other inmates at Parchman will remain in their wretched conditions without any meaningful measures to protect them from the deadly pandemic unfolding on their doorstep.

II. Plaintiffs Will Suffer Irreparable Harm Without the Relief Requested

There is no greater “irreparable harm” than death, and the risk of death from COVID-19 is quantifiable. 6,610 people, most of whom likely were living in far better conditions than the inmates at Parchman, have died as a result of COVID-19 as of March 16, 2020. Whatever the risk factor from COVID-19 for people living in the free, outside world, that risk factor must be significantly higher inside the close confines Parchman, where Plaintiffs and other inmates routinely suffer from high blood pressure, diabetes, heart-related problems, asthma, and tuberculosis.¹⁶ The CDC has confirmed individuals with these maladies are at significantly higher risk of serious illness or death from COVID-19.¹⁷

In order to combat the spread of coronavirus, the CDC recommends that everyone (1) wash their hands often with soap and water, especially after blowing the nose, coughing, sneezing, or having been in a public place; (2) if soap and water is not available, use hand sanitizer containing

¹⁴ See Doc. # 14 at 4-5 (Plaintiffs' Supportive Memo. to their Original Motion for TRO and Injunctive Relief).

¹⁵ See Medical Records of Inmate Larry Maxwell (showing repeated visits to medical clinic without receiving treatment) (Ex. H).

¹⁶ Bureau of Justice Statistics, U.S. Department of Justice, Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12, NCJ 248491 (Rev. Oct. 4, 2016) (Ex. I).

¹⁷ *Id.*

at least 60% alcohol; (3) clean and disinfect their homes and frequently touched surfaces; and, (4) avoid crowds, especially in poorly ventilated spaces.¹⁸

Parchman inmates are precluded from taking any of these protective measures. Despite their vile living conditions, Parchman inmates are provided only one bar of soap a week; they often are housed in cells without running water and are forced to wash their clothing in their toilets; they are not provided cleaners or disinfectants of any kind on a regular basis, if ever; they are not provided hand sanitizer, which actually is considered contraband by MDOC; and they are constantly crammed into crowded spaces with poor ventilation. In short, Parchman inmates live in conditions that are perfectly opposite the best practices recommended by the CDC. Without Court intervention, Plaintiffs and the other inmates at Parchman will suffer the maximum effects of COVID-19, including death, which certainly satisfies the irreparable harm standard.

III. The Harm Faced by Plaintiffs Significantly Outweighs Any Prejudice to Defendants as a Result of the Injunctive Relief Requested

Plaintiffs have requested proactive injunctive relief specifically tailored to minimize the potential impact of COVID-19 on the inmate population at Parchman. Neither the cost of these protective measures, nor any other potential “harm” that Defendants may argue, outweighs the substantial need to protect Plaintiffs and the inmate population, who are helpless against COVID-19 without these measures. In fact, the cheapest solution for Defendants is for the inmate population at Parchman *not* to become infected. Reasonable measures such as frequent and robust cleanings with disinfectants; the distribution of personal hygiene products such as hand sanitizer, disinfectant wipes and gels; and the frequent testing and screening of inmates and employees will

¹⁸ Centers for Disease Control and Prevention, *People At Risk for Serious Illness from COVID-19* (Mar. 12, 2020, 11:35 p.m.), <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>

save untold amounts in taxpayer dollars versus the cost of a widespread outbreak requiring extensive medical treatment of prisoners.

IV. The Injunctive Relief Requested Will Not Disserve The Public Interest

The injunctive relief sought will not disserve the public interest. In fact, the relief requested will serve the public interest in several ways. First, the public's interest is always served by following the law and protecting fellow human beings. Second, the public's interest will be served by mitigating the costs of treating COVID-19 victims at Parchman by preventing the spread of the disease within the facility. Third, the public's interest will be served by stemming the spread of COVID-19 among the families and communities of Parchman's hundreds of administrators, employees and contractors.

V. Plaintiffs Should Not Be Required to Post Bond.

Fed. R. Civ. P. 65(c) requires that movants requesting a preliminary injunction post security normally in the form of a bond. The amount of said bound is determined by Court. However, the Court is free to determine that no such bond is required based on the situation. *See, e.g., Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 302-303 (5th Cir. 1978) (cited approvingly in *Gordon v. City of Houston, Texas*, 2015 WL 138115, at *16 (S.D. Tex. January 9, 2015)). Plaintiffs are indigent prisoners of the State and do not have the resources to post a bond. Therefore, Plaintiffs respectfully request that the Court waive the bond requirement as to this Motion, or alternatively, impose a purely nominal bond.

CONCLUSION

The entire World is mobilizing in a desperate attempt to avoid the full brunt of the coronavirus. The United States is in the midst of unprecedented measures in hopes of containing the spread, and the resulting human and economic costs, of a widespread outbreak. Amidst this chaos, it would be very easy to forget those who are most helpless; those who are locked away out of sight and out of mind; those who are suffering not only the consequences of their actions, but also the consequences of a broken system that cannot, or will not, care for them as human beings. Court intervention, as described herein, is required to help these people who literally cannot help themselves.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that this Honorable Court grant the instant Motion and provide the relief sought herein and any other relief that the Court deems to be just and appropriate under the circumstances.

Date: March 16, 2020

Respectfully submitted,

/s/ Marcy B. Croft

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of March 2020, a copy of the foregoing was filed electronically with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all counsel for record registered to receive electronic service by operation of the Court's electronic filing system.

/s/ Marcy B. Croft